IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.258 OF 2005

Mohammed Irshad @ Raju Ali Ahmed ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri R.R. Pandey for the Applicant.
Ms Rajeshree Gadhvi, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 10, 2005.

P.C.:

1. On the last date submissions of the Advocates appearing for the parties were heard fully and today it is kept for judgment. The challenge in this Revision Application is to the order dated 12th July, 2005 passed by the learned Additional Sessions Judge. The Applicant is an accused who is charged with offences under section 302, 392 read with section 34 of the Indian Penal Code. It appears that a contention was raised before the learned Additional Sessions Judge at the stage of framing of charge that the Applicant's age was below eighteen years and therefore, his case ought to be transferred to Juvenile Court and for that purpose, transfer certificate of the Applicant showing his date of birth as 01st January, 1988 was produced. The learned Additional Sessions Judge referred to the Transfer Certificate produced by the Applicant which was issued

by a School stationed at Ghai-Ghat, District Basti, Uttar Pradesh. The learned Trial Judge observed that there is some overwriting in the said certificate and therefore, time was granted to the Applicant and his father to produce documents which could be believed. The learned Judge observed that the certificate which was produced by the Applicant could not have been believed and therefore, the Applicant could not be considered as juvenile.

2. The learned Advocate appearing for the Applicant submitted that the learned Judge was required to make inquiry based on the contention raised by the Applicant that he is a juvenile. He submitted that the learned Judge ought to have made proper inquiry as the issue raised by the Applicant affects jurisdiction of the learned Judge to her and decide the case. The learned A.P.P. supported the impugned order by submitting that the Applicant could not produce any material in support of his contention and therefore, learned Trial Judge was justified in passing the order.

3. Before appreciating the submissions made by the Advocates appearing for the parties, it will be necessary to refer to certain decisions of the Apex

Court. The Apex Court in a decision reported in AIR 1998 Supreme Court, Page 236 (Bhola Bhagat Vs. State of Bihar) refered to the provisions of the Juvenile Justice Act, 1986 as well as to the Bihar Children Act, 1982. In paragraph No.18 of the said decision, the Apex Court has held thus:

> "18. **Before parting with this Judgment, we would like to re-emphasise that when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard.** Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the court where such a plea is raised to examined that plea with care and it

> cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way o;r the other. (Emphasis supplied)

4. Perusal of the impugned order shows that the learned Additional Sessions Judge has not held any inquiry. Without holding any inquiry and without allowing the Applicant to establish the genuineness of the transfer certificate, the learned Judge has held that the said certificate is unbelievable. At no time any effort was made to examine the verasity of the said certificate.

5. The approach of the learned Additional Sessions Judge was totally contrary to the law laid down by the Apex Court. Though the initial burden of establishing that the Applicant was a minor may be on his guardian, but when a certificate was produced by the Applicant which prima facie supports case of the Applicant, the learned Judge was expected to hold an inquiry and only after holding inquiry, he could have recorded finding on the said certificate one way or

the other. A hypertechinal approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile. Hence, in my view, impugned order deserves to be quashed and set aside and the learned Judge will have to hold inquiry as contemplated by the Apex Court.

6. Hence, I pass the following order:

: O R D E R :

i) The impugned Judgment and Order dated 12th July, 2005 is quashed and set aside. The learned Additional Sessions Judge will consider afresh the plea of the Applicant for being considered as juvenile in accordance with law.

ii) All contentions of the parties are kept open.

iii) Parties to act upon an authenticated copy of this order.

JUDGE